

# ATTACHMENT A

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

|                                   |   |                                   |
|-----------------------------------|---|-----------------------------------|
| UNITED STATES OF AMERICA,         | ) | IN EQUITY NO. C-125-RCJ           |
|                                   | ) | Subproceedings: C-125-C           |
| Plaintiff,                        | ) | 3:73-CV-00128-RCJ-WGC             |
|                                   | ) |                                   |
| WALKER RIVER PAIUTE TRIBE,        | ) |                                   |
|                                   | ) |                                   |
| Plaintiff-Intervenor,             | ) | <b>UNITED STATES’ RESPONSE TO</b> |
| vs.                               | ) | <b>MOTION TO DISMISS</b>          |
|                                   | ) |                                   |
| WALKER RIVER IRRIGATION DISTRICT, | ) |                                   |
| a corporation, <i>et al.</i> ,    | ) |                                   |
|                                   | ) |                                   |
| Defendants.                       | ) |                                   |
| _____                             | ) |                                   |

The United States of America (“United States”), through counsel designated to represent the United States in this proceeding, responds to the *Walker River Irrigation District’s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), or in the Alternative, to Stay Proceedings with*

*Respect to Mineral County's Amended Complaint in Intervention* (Doc. 751) and points and authorities in support (Doc. 751-1) (reference hereafter will be to the points and authorities (Doc. 751-1) as "WRID Memo").<sup>1</sup> Through its motion, WRID seeks to have Mineral County's *Amended Complaint in Intervention* (Doc. 20) ("Amended Complaint") dismissed for lack of subject matter jurisdiction. Doc. 751. The United States responds to the argument presented in section II of WRID's Memo under the title: "The Provisions of the Walker River Decree Do Not Give This Court Subject Matter Jurisdiction to Adjudicate Claims for Additional Water Rights." WRID Memo at 3.<sup>2</sup>

For the reasons described below, this Court has exclusive and ongoing jurisdiction under the 1936 Decree<sup>3</sup> to hear and determine additional water right claims in the Walker River basin.<sup>4</sup> As such, to the extent that the Amended Complaint asserts claims for additional water rights WRID is entitled to no relief from this Court under its motion and the motion should be denied.

## **I. Introduction**

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<sup>1</sup> The Walker River Irrigation District will be referred to in this Response as "WRID." WRID was joined in its motion/memorandum by the following: Circle Bar N Ranch (Doc. 753); Mono County (Doc. 752); and Lyon County (Doc. 754). Neither Circle Bar N Ranch, Mono County, nor Lyon County supplemented the arguments presented by WRID.

<sup>2</sup> The argument raised by WRID here is identical to the argument raised by WRID against the United States in subproceeding C-125-B. *See Walker River Irrigation District's Motion to Dismiss Claims of the United States Based Upon State Law Pursuant to Fed. R. Civ. P. 12(b)(1)* (C-125-B Doc. 1981) and point and authorities in support (C-125-B Doc. Doc. 1981-1) at 7 - 9. The United States obligation to respond to motions to dismiss in subproceeding C-125-B was stayed by the 9<sup>th</sup> Circuit Court of Appeals (C-125-B Doc. 2001).

<sup>3</sup> On April 14, 1936, the Court issued a decree concerning many water rights in the Walker River basin. The Court's decision concerning the Walker River Paiute Tribe's ("Tribe") water right was appealed to the 9<sup>th</sup> Circuit, United States Court of Appeals and reversed. On remand, the 1936 Decree was amended by the District Court on April 24, 1940, per a stipulation submitted by the parties. Throughout this Response, the decree will be referred to as the "1936 Decree" or "Decree" and shall refer to the Decree as amended in 1940.

<sup>4</sup> The United States takes no position on whether Mineral County's claims are an assertion of additional water rights as contemplated under Nevada statute or whether application to the Nevada State Engineer must first be secured before Mineral County is entitled to relief. *Cf.* WRID Memo at 5 ("If Mineral County seeks a water right for Walker Lake under Nevada Law, it must first apply to the Nevada State Engineer."). In its Amended Complaint, Mineral County seeks relief that includes a minimum water level for Walker Lake and water in the amount of 127,000 acre feet per year delivered to Walker Lake. Mineral County Amended Complaint (Doc. 20) at 5. In its Amended Complaint, Mineral County asserts no priority date associated with the water sought. *Id.*

The Court ordered (Doc. 736) the defendant parties to present any and all motions to dismiss based on threshold jurisdictional challenges to the Amended Complaint. These motions were not intended to raise jurisdictional challenges that turn on factual determinations. *See* Transcript of Status Conference (11/04/2013) at 55 ln. 8 through 57 ln. 6. Instead, these motions were to raise legal challenges to the jurisdiction of the Court similar in nature to Fed. R. Civ. P. 12(b)(1) challenges. Transcript of Status Conference (07/25/2013) at 40 ln. 6 through 41 ln. 12.

In its memorandum, WRID argues that to the extent Mineral County seeks an additional water right, the Court did not retain jurisdiction to hear additional water right claims under the 1936 Decree. WRID Memo at 4 – 5. As a result, WRID asks this Court to dismiss the Amended Complaint.

WRID's argument concerning retained jurisdiction over additional water right claims disregards the plain language of the 1936 Decree and is without merit. This Court has exclusive and ongoing jurisdiction under the 1936 Decree to hear and decide additional water right claims in the Walker River basin.

## **II. Procedural Background**

The procedural background of the extensive litigation activities over the waters of the Walker River basin is relevant to the Court's consideration of its continuing, exclusive jurisdiction.

Litigation over Walker River basin water began in 1902 when suit was filed by the Miller & Lux Company against numerous water users largely located in California.<sup>5</sup> Between 1902 and

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<sup>5</sup> In 1902, federal litigation was heard in both the United States District Court for the District of Nevada (established July 23, 1866, 14 Stat. 209) and the United States Circuit Court (established February 27, 1865, 13 Stat. 440). On January 1, 1912, the United States Circuit Court was abolished and all pending matters of the United States Circuit Court, including the 1902 litigation, were transferred to the United States District Court with overlapping jurisdiction. 36 Stat. 1087, 1167.

1919, the litigation initiated by Miller & Lux was the subject of numerous published opinions and traveled through at least two federal courts of appeal.<sup>6</sup> Ultimately, between 1910 and 1919, the caption of this litigation became *Pacific Livestock Company v. Antelope Valley Land and Cattle Company*. On March 22, 1919, the federal district Court in Nevada issued a final decree in *Pacific Livestock Company* which thereafter was referred to as “Decree 731.” At no time between 1902 and 1919 was the United States joined to the *Pacific Livestock Company* litigation and this Court did not have jurisdiction over the United States or its water rights claims.

In 1924, the United States initiated this action. In this action, the United States asserted the Tribes’ surface water irrigation rights from the direct flow of the Walker River. Litigation on the United States’ action proceeded into the 1930s. This Court issued its published opinion in 1935. *United States v. Walker River Irr. District*, 11 F. Supp. 158 (D. NV 1935). Subsequently, this Court issued a decree on April 14, 1936. The United States appealed the Court’s decision concerning the surface water irrigation water rights of the Tribe to the Ninth Circuit Court of Appeals, which reversed. *United States v. Walker River Irr. District*, 104 F.2d 334 (9th Cir. 1939). On remand, the parties stipulated to changes to be made to the 1936 Decree, and this Court accepted those changes on April 24, 1940.

### **III. Argument**

#### **A. This Court has exclusive jurisdiction over all water right claims of the Walker River basin.**

WRID asserts that the Court lacks jurisdiction in this action to hear any claim of any water user seeking any water right in addition to those decreed under the 1936 Decree. WRID

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<sup>6</sup> See *Miller & Lux v. Rickey et al.*, 123 F. 604 (Cir. Ct. D. NV 1903); *Miller & Lux v. Rickey et al.*, 127 F. 573 (Cir. Ct. D. NV 1904); *Miller & Lux v. Rickey et al.*, 146 F. 574 (Cir. Ct. D. NV 1906); *Rickey Land and Cattle Co. v. Miller & Lux*, 152 F. 11 (9<sup>th</sup> Cir. 1907); *Rickey Land and Cattle Co. v. Miller & Lux*, 152 F. 22 (9<sup>th</sup> Cir. 1907); *Rickey Land and Cattle Co. v. Miller & Lux*, 218 U.S. 258 (1910).

Memo at 4 – 5. WRID’s position is contrary to established law and the plain language of the 1936 Decree. As discussed below, this Court has retained both exclusive and continuing jurisdiction to determine the additional water rights claims of the Walker River basin.

**1. The Court’s jurisdiction over the waters of the Walker River basin in this action is exclusive.**

Federal and state courts have long recognized that actions associated with the adjudication of water rights, though technically *in personam* actions, are more in the nature of *in rem* actions. *Nevada v. United States*, 463 U.S. 110, 143-144 (1983) (“water adjudication are more in the nature of *in rem* proceedings”); *United States v. Alpine Land & Reservoir Co.*, 174 F.3d 1007, 1013-1014 (9<sup>th</sup> Cir. 1999). As such, the United States Supreme Court has “recognized that actions seeking the allocation of water essentially involve the disposition of property and are best conducted in unified proceedings.” *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 819 (1976).<sup>7</sup> The rule for such proceedings is that “the first court to gain jurisdiction over a *res* exercises exclusive jurisdiction over an action involving that *res*.” *Alpine Land & Reservoir Co.*, 174 F.3d at 1013 citing and thereafter quoting *Kline v. Burke Const. Co.*, 260 U.S. 226, 229-30 (1922) (“when one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the jurisdictional power of the other as if it had been carried physically into a different territorial sovereignty.”). The Ninth Circuit has reasoned that this well established principle of exclusivity supports a decree court’s inherent ability to enforce its decree:

The reason why exclusivity is inferred is that it would make no sense for the district court to retain jurisdiction to interpret and apply its own judgment to the future conduct contemplated by the judgment, yet have [another] court construing what the [decree]

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<sup>7</sup> This well-established rule is embraced under Nevada law. Nev. Rev. Stat. § 533.450(1) (“[O]n stream systems where a decree of court has been entered, the action [challenging any order of the State Engineer] must be initiated in the court that entered the decree.” (emphasis added)).

meant in the judgment. Such an arrangement would potentially frustrate the decree court's purpose.

*Alpine Land & Reservoir Co.*, 174 F.3d at 1013 quoting *Flanagan v. Arnaiz*, 143 F.3d 540, 545 (9th Cir.1998).

As explained in more detail above, litigation over the water rights of the Walker River basin began in this Court more than a century ago when an action was brought to adjudicate water rights between various water users in both California and Nevada. See section II, above. In the course of the *Miller & Lux* litigation, the Supreme Court determined that this Court properly had exclusive jurisdiction over the competing water rights at issue. *Rickey Land and Cattle Co. v. Miller & Lux*, 218 U.S. at 262 (“[T]he court first seised should proceed to the determination without interference, on the principles now well settled as between the courts of the United States and of the states.”). When this Court first established jurisdiction in 1902, it was “seised” with the *res*, namely the waters of the Walker River basin, and thereafter had exclusive jurisdiction over that *res*. *Id.*; see also, *Kline*, 260 U.S. at 234 (“The well-established rule ... [is] that where the action is one in *rem* that court—whether state or federal—which first acquires jurisdiction draws to itself the exclusive authority to control and dispose of the *res* ...”).

Since 1902, litigation over water rights in the Walker River basin has been properly brought exclusively before this Court. In 1919, this Court decreed the relative rights of numerous Nevada and California water users and issued a decree. *Pacific Livestock Company, et al. v. T.B. Rickey, et al.* Decree No. 731. In 1924, the United States filed this action on behalf of the Tribe to determine the surface water irrigation rights of the Reservation, as it existed at the time. As a result, this Court for the first time acquired jurisdiction over the United States. After more than a decade of litigation, this Court issued its 1936 Decree, which incorporated the water rights of the non-Indians determined under Decree 731. 1936 Decree at 10 – 59; see also *Walker*

*River Irr. District*, 11 F. Supp. at 160. Thus, with the 1936 Decree, this Court, through the filings of the United States and its exclusive jurisdiction over the *res*, had determined all claims to water rights in the Walker River basin that had been previously brought by any claimant—whether in California or Nevada. This includes the claims previously brought by United States on behalf of the Tribe.

In 2001, the Nevada Supreme Court recognized this Court’s exclusive jurisdiction over the waters of the Walker River basin under the 1936 Decree. In *Mineral County v. Nevada*, 20 P.3d 800 (Nev. 2001), Mineral County sought a *writ* of prohibition to prevent Nevada from granting additional rights to withdraw surface or ground water from the Walker River basin. The Nevada Supreme Court examined the jurisdiction of this Court under the 1936 Decree to determine whether any jurisdiction remained in state courts with respect to such waters. Embracing the Ninth Circuit’s reasoning and holding in *Alpine Land & Reservoir Co.*, the court determined that no state court jurisdiction remained with respect to the *res* of the case given this Court’s exclusive jurisdiction under the 1936 Decree:

We conclude that the Decree Court, which has had continuing involvement in the monitoring of the Walker River for more than eighty years, is the proper forum for the redress that Petitioners seek. Moreover, because the [1936] Decree involves the allocation of interstate waters between California and Nevada, we believe that a consistent and controlling interpretation by a federal court of competent jurisdiction is more appropriate.

*Id* at 807. Thus, the highest state court in Nevada has conclusively determined that no Walker River water rights claimant may seek relief in Nevada state courts; its reasoning on this issue is persuasive.

For more than a century, this Court has exercised exclusive jurisdiction over the *res* of this case, namely the waters of the Walker River basin. Today this Court continues to maintain its jurisdiction over the *res* of this case. To the extent that Mineral County, or anyone, brings

water right claims based on either federal or state law, this Court has exclusive jurisdiction to hear such claims.

**2. The Court has retained jurisdiction under the 1936 Decree to adjudicate additional water rights in this action.**

WRID asserts that this Court did not retain continuing jurisdiction to adjudicate new water right claims under the 1936 Decree. WRID Memo at 4 - 5. In support of this argument, WRID purports to rely on language in the 1936 Decree, yet it ignores the plain language of the Decree, through which this Court, without limitation, retained jurisdiction over the waters of the Walker River Basin. As discussed below, in this action this Court retained the entirety of its exclusive jurisdiction over the waters of the Walker River basin, including its ability to adjudicate additional water right claims.

**a. Under the plain language of the 1936 Decree, the Court retained jurisdiction to hear and decide additional water right claims for the waters of the Walker River basin in this action.**

It is well established that a decree court may retain jurisdiction to modify its decree in the future. *Arizona v. California*, 460 U.S. 605, 617-618 (1983) (*Arizona II*). In fact, the Supreme Court has long embraced the notion that retention of jurisdiction by a single court in water rights adjudications avoids piecemeal litigation, promotes consistency, and supports unified proceedings:

The clear federal policy evinced by [the McCarran Amendment, 43 U.S.C. § 666] is the avoidance of piecemeal adjudication of water rights in a river system. This policy is akin to that underlying the rule requiring that jurisdiction be yielded to the court first acquiring control of property, for the concern in such instances is with avoiding the generation of additional litigation through permitting inconsistent dispositions of property. This concern is heightened with respect to water rights, the relationships among which are highly interdependent. Indeed, we have recognized that actions seeking the allocation of water essentially involve the disposition of property and are best conducted in unified proceedings.

*Colorado River Water Conservation Dist.*, 424 U.S. at 819. In 1936, as expressed in the plain language of the Decree, the Court retained broad, ongoing jurisdiction over the waters of the Walker River basin that in no way precludes it from adjudicating additional water right claims.

The Court must presume the language used in the 1936 Decree was the result of thoughtful and deliberate action. *St Louis, Kansas City, and Colorado Railroad Co. v. Wabash Railroad Co. and City of St. Louis*, 152 F. 849, 851 (8th Cir. 1907), *aff'd*, 217 U.S. 247 (1910) (when interpreting a decree, “the legal presumption is that the judge carefully and thoughtfully expressed therein his deliberate intention.”). In the absence of ambiguity, the Court should look to the ordinary meaning of the terms used. *Id.* at 852 (“Upon its face there is no ambiguity in [the decree’s] terms. They suggest no limitation or exception, and when the terms of a decree are plain and clear their ordinary meaning and effect may not be lawfully contracted or extended unless it appears with reasonable certainty that such was the purpose of the court.”). A party who challenges the clear language of a decree “assume[s] no light burden.” *Id.*

Courts apply similar rules of construction when examining consent decrees and the rules associated with construing consent decrees are helpful here.<sup>8</sup> Such decrees are interpreted basically like contracts. *United States v. ITT Continental Banking Co.*, 420 U.S. 223, 236-37 (1975). Accordingly, the scope of the decree “must be discerned within its four corners.” *United States v. Armour & Co.*, 402 U.S. 673, 682 (1971). Courts may look beyond the decree only if the decree is ambiguous. *See ITT*, 420 U.S. at 238; *Segar v. Mukasey*, 508 F.3d 16, 22 (D.C. Cir. 2007). Like language in a contract, language in a decree “is not ambiguous merely because the parties later disagree on its meaning,” but only if it is “reasonably susceptible of different constructions.” *Bennett Enterps., Inc. v. Domino’s Pizza, Inc.*, 45 F.3d 493, 497 (D.C. Cir. 1995). By examining the unambiguous language of the 1936 Decree, this Court can easily

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<sup>8</sup> The 1936 Decree was not issued as a consent decree.

discern that jurisdiction was retained to modify the Decree that included the ability to determine additional water rights.

In the 1936 Decree, the Court determined the surface water irrigation rights of the Reservation from the direct flows of the Walker River based on irrigation uses as they existed at the time; incorporated numerous surface water irrigation rights that had been previously determined in Decree 731; and adjudicated additional surface water irrigation rights of non-Indians. 1936 Decree at 10; 10 – 59; and 59 - 70, respectively. The Court also retained broad ongoing jurisdiction over the Walker River basin:

The Court retains jurisdiction of this cause for the purpose of changing the duty of water or for correcting or modifying this decree; also for regulatory purposes, including a change of point of diversion or of the place of use of any water user, but no water shall be sold outside of the basin of the Walker River except that appurtenant to the lands of Mrs. J.S. Conway and R.P. Conway referred to in the foregoing tabulation.

The Court shall hereafter make such regulation as to notice and form or substance of any application for change or modification of this decree, or for change of place or manner of use of water as it may deem necessary.

1936 Decree at 72 ln. 29 through 73 lns. 1 – 10 ¶ XIV (as amended April 24, 1940). With this language, the Court articulated at least four distinct purposes for which it retained jurisdiction: 1) changing the duty of water; 2) correcting the Decree; 3) modifying the Decree; and 4) regulatory purposes, including a change of the point of diversion or the place of use of any water user. *Id.* The Court also retained broad, ongoing jurisdiction to establish procedures to resolve “any application for change or modification” of the Decree. *Id.*

Under the plain terms of the 1936 Decree, the Court retained jurisdiction to “modify” the Decree. Recognizing the breadth of modifications inherent in its ongoing oversight of the waters of the Walker River basin, the Court placed no limitation on this term. A substantial limitation cannot now be read into the word “modify” simply to defeat the additional water right claims of

those who assert claims paramount to WRID's. Further, at the conclusion of the litigation in 1936, although the Court had jurisdiction over many water users in the Walker River basin, the surface flow of the Walker River was not fully appropriated and many water rights remained unaddressed (*e.g.* domestic water rights, groundwater rights, reserved rights for other federal lands, commercial use rights, natural resource development use rights, water rights created/developed subsequent to 1924, *etc.*). Only by broadly retaining jurisdiction could the Court hope to administer the interrelated water rights of the Walker River basin in priority. Thus, the Court's retained jurisdiction to modify the Decree must be interpreted broadly: the Court retained, ongoing jurisdiction over matters associated with the Decree, including modifying the Decree itself. This ability to consider modifications to the Decree naturally includes the ability to determine and incorporate additional water rights.

It is also clear from the language of the Decree that the Court specifically contemplated that it would need to develop a host of Walker River basin-specific procedures, as needed, to allow the parties to petition the Court under the ongoing jurisdiction retained under the 1936 Decree. Indeed, the extensive procedures associated with this very subproceeding (C-125-C) are a vivid illustration of "such regulation as to notice and form or substance of any application for change or modification of this decree" contemplated by the Court under the 1936 Decree. Most importantly, the "changes" and "modifications" contemplated here to "modify" the Decree are, by the plain language of the Decree, broader than, distinct from, and in addition to "correcting" the Decree, "changing the duty of water," and "chang[ing the] point of diversion or [ ] the place of use of any water user." An application for additional water rights under the 1936 Decree is undeniably an application for a "change or modification" to "modify" the 1936 Decree. Any

other conclusion would write this language out of the Decree; such a result could not have been intended when the Decree was issued and cannot now be imposed because WRID desires it so.

Ultimately, the 1936 Decree speaks for itself. Through the Decree, the Court maintained its jurisdiction to hear claims of water rights holders to assert additional water rights and to modify the decree accordingly. WRID's assertion that no claim for additional water rights may be made in this action or under the 1936 Decree simply ignores the plain language of the Decree.

**b. At the time of the 1936 Decree, the Court understood that additional water right claims existed in the Walker River basin.**

The Court need not look beyond the plain language of the 1936 Decree to conclude that the Court retained jurisdiction to modify the Decree by including additional water rights. Nonetheless, the same conclusion is supported by contemporaneous, published statements by the Court, and by briefs before the Court. These documents demonstrate that the Court recognized the existence of additional claims the United States had not brought in the 1924 litigation. These claims include a storage right claim for Weber Reservoir. The language used in the 1936 Decree ensures that such claims could be brought, decided, and incorporated under the Decree.

Weber Reservoir is located on the Walker River Indian Reservation. The United States did not bring a storage right claim for Weber Reservoir when it initiated this action in 1924; Congressional appropriations were not yet secured for and construction was not begun on Weber Reservoir until 1933.<sup>9</sup> Yet, by the time the Court issued its 1936 Decree, it was well aware that Weber Reservoir approached completion and that additional water rights for this reservoir were contemplated by the United States.

In its published opinion of 1935, the Court discussed approvingly the "Blomgren Report," a study the United States Department of the Interior produced in 1928 at the direction of

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<sup>9</sup> The evidentiary record on the litigation initiated in 1924 was closed in 1932. *Walker River Irr. District*, 11 F. Supp. at 162

Congress that examined the Tribe's storage needs on the Reservation. *Walker River Irr. District*, 11 F. Supp. at 164-165. Indeed, the Court's opinion fully embraced the Blomgren Report's recommendations that 1) water rights be adjudicated at the earliest possible date; 2) the entire Walker River system be placed under ongoing supervision of the Court; and 3) a storage reservoir be built on the Reservation. *Id.* at 164-65. The Court observed that "[t]he construction of the proposed dam and reservoir would undoubtedly greatly increase the present supply and probably insure water sufficient for all needs of the reservation throughout the year." *Id.* at 165 (emphasis added). Thus, in 1935 the Court recognized that the water rights it decreed for the Tribe did not address or meet "all needs" of the Tribe and there remained important, outstanding, unmet need for reservoir storage.

WRID equally embraced the Blomgren Report. WRID informed the Court of Weber Reservoir's existence, and urged the Court to take the potential additional storage of the Tribe into account. After this Court's 1935 opinion but before this Court issued its 1936 Decree, this Court took briefing from the United States and WRID and other defendants concerning exceptions to the Report of the Special Master. In this briefing, WRID informed the Court of the existence and near completion of Weber Reservoir. *Memorandum of Walker River Irrigation District and other Defendants in Answer to "Brief on Exceptions to the Master's Findings, Conclusions and Proposed Decree" Filed By Plaintiff Through Its Attorneys, Ethelbert Ward and William S. Boyle* (January 8, 1936) ("WRID 1936 Memorandum"). WRID informed the Court "the fact remains that [a money] appropriation has [now] been made [by the federal government] to construct and water has been stored in the reservoir, which facts we assume will not be challenged by plaintiff." WRID 1936 Memorandum at 6. Further, WRID described the connection and relationship between Weber Reservoir and the Blomgren Report. WRID

correctly pointed out to the Court that “[a]pparently, subsequent investigations [to the Blomgren Report] have proven the advisability of the construction of a dam at or near the Weber site because the dam and reservoir are now actually existing things.” *Id.* at 7.

By the time the Court issued the 1936 Decree, it was fully aware that the United States had constructed a new reservoir, action the Court itself had supported as a solution to the water needs on the Reservation. As a result, the Court was aware that the United States had an anticipated, obvious claim for storage water that was not resolved under the Decree and it retained broad jurisdiction to modify the Decree so that it could adjudicate additional water rights in the future. WRID’s very narrow interpretation of the 1936 Decree would rob the word “modify” of the obvious meaning necessary to effectuate this one very real example of an additional water right.

**c. The Court has previously determined that the claims for additional water rights of the United States were properly brought before this Court under the 1936 Decree.**

Finally, although in a different context, this Court has already considered the propriety of the additional water right claims and has determined that those claims are properly brought before the Court under the continuing jurisdiction of the 1936 Decree. WRID initiated Subproceeding C-125-A under the 1936 Decree in 1991, when it sought injunctive and declaratory relief against the California State Water Resources Control Board for alleged interference with WRID’s decreed water rights. (C-125-A Doc. 3 January 9, 1991). In response to WRID’s petition, the Tribe answered and submitted a counterclaim for additional water rights under the 1936 Decree. (C-125-A Doc. 12-2 March 18, 1992). Subsequently, the United States also answered the petition and submitted a counterclaim for additional water rights that was virtually identical to the Tribe’s counterclaim. (C-125-A Doc. 50 October 20, 1992). In

response to these counterclaims, WRID and the State of Nevada moved to dismiss, alleging that the counterclaims were not properly before the Court. The Court disagreed, holding that the claims of the United States and the Tribe were inexorably intertwined with the property rights established in the 1936 Decree:

[t]he Tribe's and the United State's claim against [WRID] arises out of the property rights established and not established in the [1936] Decree. [WRID's] claim against the Board also arises out of the property rights established in the [1936] Decree. Since both claims arise out of the same transaction or occurrence, the Tribe's and the United State's claim against the District is appropriately brought here. The Court will treat the claim as if it were brought as a cross-claim."

*Order* October 27, 1992 (Doc. 52) at 4 – 5 (emphasis added). The Court's language illustrates its plain recognition that the additional claims of the United States and Tribe properly fell under the continuing jurisdiction that the Court retained to modify the 1936 Decree. Just as WRID's, the Tribe's, and the United States' claims arise out of the property rights established in the 1936 Decree, any claims of Mineral County for additional water rights arise out of the property rights established in the 1936 Decree.

**3. WRID's argument against retained jurisdiction is inconsistent with the plain language of the 1936 Decree and fails to otherwise establish that the Court did not retain jurisdiction to adjudicate additional water rights under the 1936 Decree.**

The United States has established that this Court has exclusive jurisdiction under the 1936 Decree to hear and decide additional water right claims. WRID argues that the 1936 Decree does not permit any party to assert any additional water right claims under the 1936 Decree. As discussed below, WRID's argument is not persuasive.

WRID simply asserts, without more, that Mineral County's additional water right claims do not attempt to 1) change the duty of water; 2) correct or modify the 1936 Decree; 3) make changes to existing water rights; or 4) regulate existing water rights. WRID Memo at 4. At the

heart of WRID's assertion, WRID seems to imply that the meaning of the word "modify" means no more than and should be read as synonymous with the word "correct." WRID's interpretation would render the words "modify" and "modification" of paragraph XIV of the Decree redundant, meaningless, and unnecessary; in essence, WRID chooses to ignore words that do not conform to its argument. This cannot stand because it flies in the face of common sense and the presumption that decree language is thoughtfully considered and deliberate. *See St. Louis, Kansas City, and Colorado Railroad Co.*, 152 F. at 851.

Contrary to WRID's narrow interpretation, the Court's deliberate use of the words "modify" and "modification" in paragraph XIV of the 1936 Decree gives the Court broad latitude in its ongoing jurisdiction under the Decree. Taken in context, the modifications contemplated by the Court must relate to actions in addition to those specifically listed in the Decree: changes to the duty of water; corrections to the Decree; and regulation of existing water rights. The Court did not specify the universe of modifications that might be subsequently presented to the Court because it did not need to; it certainly did not intend its language to be considered meaningless or otherwise intend to limit all modifications to nothing more than corrections of errors associated with the rights specified in the 1936 Decree. Indeed, the Court was prepared to consider "any application" for "modification" of the Decree. The adjudication and incorporation of additional water rights under the 1936 Decree is wholly consistent with the language of the Decree preserving the Court's continuing jurisdiction.

In fact, WRID's unreasonably narrow construction of the 1936 Decree is inconsistent with this Court's previously recognized ability to modify the 1936 Decree to determine water rights in addition to those recognized in the 1936 Decree. Pursuant to this Court's retained jurisdiction under paragraph XIV of the Decree, the Court has previously ordered:

With respect to [application to appropriate unappropriated waters of the Walker River or its tributaries in the State of California], it is the intent of this Court that ... the Special Master shall timely move this Court for entry of a supplemental decree in this case recognizing any rights granted ...

*Order of Appointment of California State Water Resources Board as Special Master* (Case 3:73-CV-125, Doc. 161 as adopted by Order April 9, 1990, Doc. 165) (“1990 Order”) at 3 ¶ 3); *see also id.* at 2 ¶ 1 (the 1990 Order was issued pursuant to the Court’s retained authority to modify the Decree under paragraph XIV).<sup>10</sup> The Court has already recognized in its 1990 Order that claims for additional water rights fall squarely and explicitly under this Court’s continuing jurisdiction to “modify” the Decree. Indeed, WRID’s argument to the contrary is incongruous: the Court could not order that additional water right claims in California be determined in that State’s forum if the Court did not have continuing jurisdiction under the 1936 Decree to determine the additional claims in the first instance.<sup>11</sup> Ultimately WRID’s internally inconsistent argument cannot stand. As exercised by the Court in its 1990 Order, the continuing jurisdiction of the Court permits it to adjudicate additional water rights and incorporate them into the 1936 Decree.

#### IV. CONCLUSION

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<sup>10</sup> The Court similarly exercised broad jurisdiction and control over unappropriated water of the Walker River basin in 1953 when the Court authorized the water master to proportionately distribute unappropriated water to those with water rights under the 1936 Decree. *Order Approving Rules and Regulations for Distribution of Water on the Walker River Stream System* (C-125 September 3, 1953) (at 4 of Rules “If at any time the Chief Deputy Water Commissioner determines that there is more water available in the stream than is required to fill the rights of all of the vested users ... then he shall prorate such excess water to all users in proportion to the rights already established.”). This authorization of unappropriated water use was beyond the rights strictly recognized under the 1936 Decree.

<sup>11</sup> Indeed, WRID embraces the fact that the Decree can be modified to incorporate additional water rights. *See Walker River Irrigation District’s Points and Authorities in Support of Motion to Dismiss Claims of the United States Based Upon State Law Pursuant to Fed. R. Civ. P. 12(b)(1)* (C-125-B Doc. 1981-1) at 17 (“the United States might bring those [additional water rights] to this Court for administration under the [1936 Decree].” (emphasis added)). The Court’s ability to administer additional water rights under the Decree naturally derives from a congruous ability to determine in the first instance whether claimed additional water rights exist.

WRID's arguments are contrary to the plain language of the 1936 Decree, the Court's contemporaneous understanding of its jurisdiction at the time of issuance of the 1936 Decree, and the Court's subsequent recognition of its continuing jurisdiction to decree additional water rights. As described above, this Court has exclusive and ongoing jurisdiction under the 1936 Decree to hear and determine additional water right claims in the Walker River basin. To the extent that the Amended Complaint asserts claims for additional water rights, WRID's interpretation of paragraph XIV of the 1936 Decree is incorrect and its motion should be denied.

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Respectfully submitted,

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